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FOREIGN SERVICE DESPATCH

FROM: AMEMBASSY, Tokyo

TO: THE DEPARTMENT OF STATE, WASHINGTON.

REF: Misdes 1446, April 23, 1952

DATE: April 30, 1952

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SUBJECT: Transmittal of Memoranda on FCN Treaty Discussion with Japan

As the Department is aware, the Mission has transmitted the memoranda of conversation on the present informal discussion on the proposed FCN Treaty only after an approved text has been agreed upon with the representatives of the Ministry of Foreign Affairs. Although copies of the Mission's version of some of these memoranda have been in the hands of the Japanese for as long as seven weeks, their proposed revisions have not yet been presented to the Mission. There have been transmitted to the Department, therefore, only the first, second, third and fifth memoranda of conversations.

In view of the fact that the previous Japanese revisions have not been substantive in nature, the Mission believes that it should now transmit its own version of these memoranda without further delay. Any important change subsequently proposed by the Japanese will, of course, be reported. By transmitting these memoranda without awaiting the Japanese revisions, the Mission will have the benefit of the Department's comments at a much earlier date.

The Japanese representatives have informed the Mission that only a few more meetings will be needed to complete this round of informal discussions, possibly by May 10, 1952. They further state that they will then require no more than three weeks to consult with other Ministries prior to the final review meetings, which may begin on or about June 2, 1952. It would be most desirable if the Mission were prepared to engage in these review meetings as soon as the Japanese indicate a desire to undertake them. The Department's assistance to this end would be greatly appreciated.

There are transmitted for the Department's comments copies of the Mission's version of the fourth meeting and of the sixth to tenth meetings. Brief notes on the specific proposals made by the Japanese are as follows:

1. Fourth Meeting (March 4): pertains to Article VII, which has been the subject of telegrams between the Department and the Mission, and which is still under active study by the Ministry of Finance and other Japanese agencies. (Enclosure 1).

2. Sixth Meeting (March 11): The proposal that "upon compliance with the laws and regulations with respect to registration and other formalities" be added to Article X (Enclosure 2, page 4).

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DEPARTMENT OF STATE
L/T
MAY 20 1952
TREATY BRANCH
OFFICE OF THE LEGAL ADVISER

3. Seventh Meeting (March 13):

a. The suggestion that the word "residents" be deleted from paragraph 3, Article XI (Enclosure 3, page 2).

b. The proposal that paragraph 5 (c), Article XI, be revised to read "(c) accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature with respect to income taxes and inheritance taxes than are accorded to other non-resident persons". (Enclosure 3, page 3).

c. The proposal (later withdrawn pending further study) that paragraph 6, Article XII be deleted, since this subject is already covered by Article XXIV (Enclosure 3, page 8).

4. Eighth Meeting (March 17): a review meeting, during which previous memoranda of conversation were discussed (Enclosure 4).

5. Ninth Meeting (March 20): review and discussion on Article XII; no further proposals made. (Enclosure 5).

6. Tenth Meeting (March 25): Although a reservation with respect to Articles XII and XIV will be proposed at a later date, no revisions were suggested at the tenth meeting (Enclosure 6).

For the Ambassador:

Frank A. Waring
Counselor for Economic Affairs

Enclosures:

Memoranda of Conversation:

Fourth Meeting (March 4)
th Meeting (March 11)
venth Meeting (March 13)
Eighth Meeting (March 17)
Ninth Meeting (March 20)
Tenth Meeting (March 25)

Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. William W. DIEHL, Financial Attache
Mr. Dudley G. SINGER, Commercial Attache

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Tuesday, March 4, 1952 FOURTH INFORMAL MEETING

ARTICLE VII

Mr. Otabe opened the meeting by proposing that Article VII of Standard Draft be replaced by the following:

"1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment with respect to engaging in commercial, manufacturing, processing, construction, publishing, scientific, educational, religious and philanthropic activities.

"2. Nationals and companies of either Party shall be accorded, within the territories of the other Party, most-favored-nation treatment with respect to:

(a) exploring for and exploiting mineral deposits;
(b) engaging in fields of economic and cultural activity (except financial and insurance activity) in addition to those listed in paragraph 1 of the present Article or in subparagraph (a) of the present paragraph;
(c) organizing, participating in and operating companies of such other Party.

"3. Nationals and companies of either Party shall be accorded within the territories of the other Party the right to organize companies for engaging in commercial, manufacturing, processing, construction, mining, publishing, scientific, educational, religious and philanthropic activities, and to control and manage enterprises which they have been permitted to establish or acquire within such territories for the foregoing and other purposes.

"4. Companies, controlled by nationals and companies of either Party and constituted under the applicable laws and regulations within the territories of the other Party for engaging in the activities listed in paragraph 1 of the present Article, shall be accorded national treatment therein with respect to such activities."

In presenting the Japanese proposal, Mr. Otabe indicated that paragraphs 1 and 2 were the same as Article VII, paragraph 1 and 2, of the U.S.-Colombia FCN Treaty except for the words "financial" and "professional", and that paragraphs 3 and 4 were the same as Article VIII, paragraphs 1 and 2 of the same Treaty. Mr. Otabe pointed out that the deletion of "professional activities" from the Japanese draft was made because it was covered in Article VIII of the Standard Draft.

Mr. Bassin asked whether Mr. Otabe desired to comment with respect to the deletion of "financial activities".

Mr. Otabe replied that in order to prevent the possibility of foreign control of the economy of a country, it was not desirable to extend national and most-favored-nation treatment to "financial activities". He said, with respect to the domestic activities of banks, that even the United States did not permit foreign banks to engage in domestic depository functions, for the probable reason of preventing control of domestic industries by such banks. In this regard, Mr. Otabe felt that the mere prohibition of a depository function would not be sufficient to prevent control of domestic industries, since foreign banks could easily acquire capital from other sources or by the issuance of debentures. He also pointed out that since industry may be controlled by means of bank loans, Japan did not look with favor upon foreign investment loans to mining, gas, and electric industries. Furthermore, he

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noted that foreign banks through loans could acquire an intimate knowledge of the domestic industrial and economic situation which might, in some cases, be prejudicial to the national defense, although this comment was not directed towards the United States. From the point of view of protecting debenture holders, Mr. Otabe said foreign banks should not be permitted to issue debentures, since this activity also permitted foreign banks to acquire control of industry. Mr. Otabe added that it was not feasible to exercise adequate supervision of a bank whose main office was located abroad.

Turning to the international activities of banks, Mr. Otabe pointed out that in a country like Japan, where there is little capital and high interest rates, there is always the possibility that its exchange activities might be influenced and controlled by foreign banks which possess abundant capital and low interest rates. Moreover, he said, banks could even control foreign trade through their lending activities, and it was more difficult to control foreign banks in their exchange activities than Japanese banks.

Mr. Otabe then said that since insurance companies have the same characteristics as financial institutions, he did not believe that national treatment should be accorded insurance institutions for the reasons he had just given. With respect to most-favored-nation treatment, Mr. Otabe said that since conditions differ among the ~~various countries~~, it was not desirable to accord such treatment to financial and insurance activities. In concluding his remarks, Mr. Otabe pointed out that the views presented concerning financial activities were advocated and urged by the Ministry of Finance.

In reply to Mr. Otabe's general remarks, Mr. Singer stated that the first paragraph of Article VII can be considered the heart of the treaty; it is the basic "establishment" provision, prescribing the fundamental principle governing the doing of business and the making of investments, in a treaty which is, above all, a treaty of establishment. He stated that a satisfactory formulation of this paragraph, and its corollary provisions in the remainder of the Article, is therefore of particular importance and to be approached with special care. He further stated that the new standard formulation of Article VII (and its companion, VIII) as proposed to Japan has already appeared in the treaty with Israel, but was developed too recently for use in the negotiations leading to the other treaties hitherto concluded by the United States. He said that its inclusion in a treaty with Japan would not, therefore, be unprecedented, as might be supposed. He said the formulation proposed to Japan is considered to be more precise than that formerly in use (as appearing in the Colombia Treaty) and it is not believed that the substitution of the Colombia Treaty wording would meet the desire for greater precision.

Mr. Singer further stated that while the formulation as found in the Colombian Treaty has been much used, it was subject to certain difficulties because the use of the restrictive phrase "commercial, manufacturing, . . ."

for describing activities covered by the national treatment rule was susceptible to a wide interpretation as normal businesses were and were not covered, and the residual rule applicable to activities not covered by national treatment was not as adequate as might be desired. To remove or reduce such difficulties, Mr. Singer said the new standard formulation first stipulates the principle of sweeping coverage for all business activities of every type as is found in paragraph 1, and then enumerates in paragraph 2 the exceptions in a precise manner so as to define what may not be subject to national treatment. Mr. Bassin pointed out, in support of Mr. Singer's remarks, that it would be preferable to use the technique as indicated in the Standard Draft, and thereafter to consider those activities to be excepted, for inclusion in paragraph 2. In this manner, for example, if it were agreed to except "financial activities" or certain aspects thereof, from national and most-favored-nation treatment, then such activities could be defined and listed in paragraph 2.

Returning to the specific point concerning "financial activities", Mr. Bassin pointed out that paragraph 2 permits each party to limit activities in "banking involving depository or fiduciary functions" and therefore that such reservation would appear in general to meet the Japanese view concerning banking activities.

Mr. Otabe inquired as to the meaning of "fiduciary functions". Mr. Bassin said that although the term is very broad, it contemplates a relationship where a person places a trust in or relies upon another. He added that it is a relationship between two persons in regard to a business, contract, or piece of property, or in regard to a general business or estate of one of them, of such character that each must repose trust and confidence in the other. Mr. Bassin said examples of a "fiduciary function" were the relationship existing between an attorney and client, guardian and ward, principal and agent, executor and heir, or landlord and tenant. Mr. Bassin said that if the bank performed a function such as guardian of a minor, trustee of an estate, or executor of a will, such activity would be a fiduciary function under the terms of Article VII, paragraph 2.

Mr. Otabe inquired whether the relationship of creditor and debtor constituted a fiduciary relationship. In reply, Mr. Bassin said that a creditor-debtor relationship was not within the scope of a fiduciary activity of a bank.

At this point, Dr. Diehl stated that the Ministry of Finance's proposed deletion of "financial activities" from protection of the Treaty might be misinterpreted, since on the one hand the Japanese Government was desirous of obtaining American capital and investment in Japan, whereas on the other hand it was not willing to grant assurances that treaty protection would be available. He said that the Ministry of Finance's position would create a serious problem in providing suitable protection for banking and insurance interests, and that such interests would be justified in taking under advisement any plans for substantial investments in Japan. Dr. Diehl felt that

the proposed deletion would affect not only the heart of the treaty, but create problems which might not readily be resolved.

Dr. Diehl remarked that although reasonable Japanese requirements would be entertained in a spirit of accommodating special local circumstances where the need was clear, it appeared that the instant proposal to delete "financial activities" would appear to impair the integrity of the treaty. Mr. Bussin added that he doubted that even the Department of State would be inclined to favorably entertain a proposal as fundamental as the one being advocated and urged by the Ministry of Finance.

Mr. Yukawa stated that he would consider this question in the light of the remarks made by the American side, and would confer again with the Ministry of Finance.

Mr. Mori stated that the Japanese desired to amend Article VII, paragraph 1, either by deleting the phrase "other activity for profit", or by adding to such phrase the qualification that such "other activity for profit" contribute to the economic rehabilitation of Japan. The object of such amendment, Mr. Mori explained, was to prevent American business interests from receiving the protection of the treaty where their profit-seeking activities did not contribute to Japan's economy, and at the same time tended to create pressures affecting Japan's fiscal position. As an illustration of his point, Mr. Mori cited the U.S. motion picture interests in Japan, which have accumulated large yen earnings and are now seeking either foreign exchange remittances or other suitable outlets for their holdings, without a comparable beneficial contribution to the Japanese economy. Mr. Mori said that although American motion pictures were desirable from an entertainment point of view, they were not, in his opinion, helping the Japanese economy. He suggested that Japan should have complete freedom of action in the field of business and financial activities.

Mr. Bussin said that the inclusion of restrictive language as suggested by Mr. Mori would not grant the clarity and definity desired in a matter of utmost importance. He stated that business circles in the United States and Japan would be in doubt as to whether national or most-favored-nation treatment was applicable in a given business activity, at any given time. He added that Article VII, paragraph 1, as a statement of general principle, and should not contain restrictive clauses.

Mr. Yukawa asked whether the clause "commercial, manufacturing, ..., processing" in Article VII, paragraph 1 of the Japanese proposal covered the following: real estate brokerage, stock brokerage, warehousing, motion picture production, tourist industry, hotel services, broadcasting, canning of fish products, repairing, mixing, assembling, lumbering, freight forwarding, and stevedoring. Mr. Bussin stated that these activities could be considered to fall within one or another of the activities generalized in Article VII, paragraph 1 of the Japanese draft.

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Mr. Takara inquired as to whether Article VII, paragraph 3, of the Japanese proposal would permit a country to impose restrictions on alien ownership of particular types of activities which are necessary in the public interest and national economy. Mr. Bacon said that the term "public interest and national economy" was vague and indefinite but that Article III, paragraph 4, of the standard draft treaty provided that reasonable restrictions on alien activities could be based on the interests of public safety.

Mr. Takara inquired whether his understanding was correct that each party may exercise necessary control under the treaty over entry of capital incident to the business activities of aliens so as to safeguard its external financial position and balance of payments. Mr. Bacon said that this problem concerned foreign exchange control, and not the Takara's permission, suggested that the question be [illegible]. This however, Mr. Bacon said, any restrictions on the entry of capital incidental to the business activities of aliens could be [illegible] with Article VII, paragraph 1, which provides that nationals and companies be permitted to control and manage enterprises which they have established or acquired.

Mr. Takara stated that aliens in Japan are required to deposit greater security than is required of Japanese nationals in certain types of activities. He then inquired as to whether this requirement would violate the principles of national treatment in respect to engaging in such activities. Mr. Bassin indicated that if the activities fell within Article VII, paragraph 1, such requirements would violate the national treatment principle, but if the activity came under [illegible]. However, he added, the provisions of Article [illegible], paragraph 2, permit either party to prescribe special formalities in connection with [illegible] enterprises, and such formalities might conceivably [illegible] security deposits, provided they did not impair the substance of the rights set forth in Article VII, paragraph 1, of the standard draft.

Mr. [illegible] for Japan desired to restrict alien activities in the [illegible] and the case of National Bulk Carriers, [illegible] presently under contract with the Japanese [illegible] which [illegible] "from the use of N.B.C." at Japanese [illegible] Japan. Mr. Takara asked whether the treaty would [illegible] to prevent national treatment and thus enable it to [illegible] "buy others", as many Japanese shipbuilding [illegible]. Mr. Bassin replied that N.B.C., by contract with the Japanese [illegible] limited to a certain type of activity and that the treaty would [illegible] enterprises of such contract to permit national treatment [illegible] N.B.C. desired to widen its scope of operations [illegible], it would have to amend the contract, which would [illegible] recommend the matter.

Office of the United States Political Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Harukd MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of Ministry of Foreign Affairs, Tokyo, Japan.

Date: Tuesday, March 11, 1952 SIXTH INFORMAL MEETING

ARTICLE IX

Mr. Otabe expressed the belief that it might be difficult to implement paragraph 1 (b) of this Article with respect to an American in Japan who might be a legal resident domiciled in a state which imposes restrictions on Japanese ownership of real property, since he might attempt to circumvent this clause by claiming another state as his domicile. Mr. Mori inquired how the Japanese authorities might determine the actual domicile of an American citizen.

Mr. Bassin pointed out that a person's domicile is a place where a man has a true, fixed and permanent home or principal establishment, and to which, whenever he is absent, he has the intention of returning. It is a place where a man has voluntarily fixed the residence of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home for an unlimited or indefinite period. Mr. Bassin said that the key to determining a person's domicile is his intent. He pointed out that [illegible] may be inferred from various circumstances. For example, if a person pays taxes, votes, maintains a home and family, keeps bank accounts

and other property in a state, the presumption is that he is domiciled in that state. His admissions in documents may be also used to ascertain his intent concerning domicile. In this respect his passport may be utilized in making the determination. He added that a more important decision facing the Japanese Government concerned the domicile of corporations or companies. The latter determination would be quite simple since the domicile of a judicial person would be evident in the documentation required for registration in Japan.

Mr. Otabe inquired whether the provisions of Article IX would govern the acquisition of property rights in the United States by an American company in which a Japanese national might have acquired an interest in conformity with Article VII of this treaty. Mr. Otabe further inquired whether an American Company duly organized or controlled by Japanese nationals would be entitled to acquire land in the United States like any other American company. He further added that any foreigner or foreign juridical person whose country or state imposes prohibitions or restrictions on the enjoyment of rights by Japanese nationals or Japanese juridical persons with respect to land, will be subject to similar prohibitions or restrictions with respect to the enjoyment of land ownership in Japan. With respect to the implementation of this principle, and in conformity with the Alien Land Law, a company organized in Japan by foreign nationals or juridical persons will, in this connection, be regarded as a company of the state, country or countries of such foreigners when the latter (a) comprise not less than one half of the members, shareholders, or executive officers of such company, or (b) control not less than one half of the capital of such company, or (c) represent the majority of the votes in such company.

With reference to Mr. Otabe's first question, Mr. Adams replied that the provisions of this Article applied only to Japanese companies doing business in the United States and that the FCN Treaty does not govern the activities of American nationals and companies in the United States, or of Japanese in Japan. Mr. Bassin then added, in response to Mr. Otabe's second question, that an American company duly organized under United States law, in which Japanese nationals participated, would be entitled to acquire real estate. He pointed out, however, that the extent of alien ownership in certain fields of activity was limited by law in the United States. In the acquisition of mining rights, for example, participation by aliens was limited to not more than 25 per cent of the stock ownership of the enterprise involved. Within these limits on alien participation, however, American companies with alien stockholders were entitled to acquire real estate.

Mr. Otabe again raised the question of determining a person's domicile, adding that this was considered a most important point. Mr. Bassin replied that this could be determined by questioning the person and examining his documentation, and that the Japanese authorities were free to decide this point, based on the evidence available.

Mr. Otabe requested clarification of the expression "enterprises carrying on particular types of activities" as used in paragraph 4, Article IX.

Mr. Bassin replied that this wording envisages primarily domestic corporations operating in the fields enumerated in paragraph 2 (first sentence) of Article VII. Thus, he said, the broad national treatment rule on acquiring and owning personalty (including common stocks) set forth in the first sentence of paragraph 4, Article IX, cannot become a loophole through which the reservations of Article VII, paragraph 2, may be circumvented. Mr. Bassin pointed out that this question was closely related to Article VII are resolved, paragraph 4, Article IX would, in his opinion, be clarified.

Mr. Otabe stated that Japan desired to specify reservations under Article IX which are regarded as necessary to safeguard Japan's external financial position or balance of payments position, as well as reservations necessitated by Japanese laws concerning foreign investment. He observed that in the course of the meetings on the ITO Charter, the United States delegation agreed that the receiving country had the right to decide whether or not to accept foreign investments, and that such a reservation is made in Article 12, paragraph 1 (c) (ii) of the Havana Draft which states that a member has the right to determine whether and to what extent and upon what terms it will allow future foreign investment. He added that under current Japanese regulations, for example, restrictions are imposed on (a) the acquisition of new shares of stocks by a foreign investor who desires to remit the dividends in a foreign currency; (b) the acquisition of old shares of stocks by a foreign investor; (c) the conclusion or renewal of technical assistance contracts whose period of payment extends over one year; and (d) the acquisition of debentures or claimable assets arising from loans. He added that in these cases a foreign investor must apply to the Foreign Investment Commission for validation and approval of any contract entered into or renewed, and report to the Commission when any stock has been acquired under such a contract.

Mr. Adams replied that the question raised by Mr. Otabe was closely related to Article VII, and suggested that further discussion on this point be deferred since it could not be clarified until the questions on Article VII were resolved.

Mr. Otabe then stated that Japan wanted to include a reservation in Article IX on certain matters covered by the Marine Transportation Law. He said that this law requires all persons or organizations under the Japanese laws to obtain specific permission from the Ministry of Transportation prior to acquiring or leasing a vessel from an alien. This law also requires Ministry of Transportation approval of any transfer of a Japanese vessel to alien ownership and/or registry. Mr. Otabe added that this reservation might be necessary in order to clarify that national treatment for aliens does not extend to the selling or purchasing of vessels, since Japanese could easily sell or buy among themselves without Ministry of Transportation approval.

Mr. Adams replied that the FCN treaty prescribed the rights and obligations of the nationals of either party in relation to the government of the other party. Any regulations governing transfers or shipping ownership and/or registry are applied by a government to its own nationals and not to the alien buyers or sellers. Mr. Adams added that this point therefore had no relation to the provisions of Article IX, and that such controls over the transfer of registry of national [illegible] were generally applied by all maritime countries.

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ARTICLE X

Mr. Otabe suggested that the phrase as "upon compliance with the laws and regulations with respect to registration and other formalities" (as used in the United States' FCN Treaty with Italy) be added to this Article X in order to avoid any future misunderstanding.

Mr. Adams replied that the phrase suggested by Mr. Otabe was employed in the FCN Treaty with Italy in lieu of the phrase "obtaining and maintaining", but that it was understood that the latter phrase in Article X of the Standard Draft meant the obtaining and maintaining of patents and inventions in accordance with appropriate laws and regulations.

Mr. Otabe and Mr. Miyagawa asked for a definition of "trade marks, trade names, trade labels", as used in Article X. Mr. Singer replied that a trade mark was a distinguishing mark, device or symbol (including the use of distinctive letters, characters or type) used by a manufacturer or merchant on his goods. A trade name was defined as the distinguishing name used by a manufacturer or a merchant for his goods, as well as the distinguishing name of the firm or concern itself under which a concern does business. Mr. Singer added that a trade label was the distinctive marking or label (usually, but not always, comprising one or more trade names and/or trade marks) identifying the goods of a manufacturer or merchant.

Mr. Otabe inquired why copyrights were not included among the various industrial property rights mentioned in Article X, and whether some other arrangement was contemplated to cover copyright matters.

Mr. Adams replied that there exists an expeditious and adequate executive procedure in the United States which is more suitable than an FCN Treaty for dealing with bilateral copyright relations. This is a Presidential Proclamation, which establishes the requisite reciprocity, and it is found more convenient and expedient than an FCN Treaty by the competent copyright authorities. The use of this procedure, he added, saves the FCN Treaty from becoming involved in technical complications that sometimes arise in the copyright field.

Mr. Otabe stated that these definitions were clear and satisfactory to the Japanese side. He added that there were no further questions on Article X, and that, in the light of the explanations received, further consideration would be given to this Article with respect to the Japanese suggestion that the phrase "upon compliance with the laws and regulations with respect to registration and other formalities" be added. Mr. Otabe proposed that the meeting adjourn until Thursday, March 13, when discussions could begin on Article XI.

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Office of the United States Political Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan

Date: Thursday, March 13, 1952 SEVENTH INFORMAL MEETING

ARTICLE XI

Mr. Yukawa asked for clarification of the word "residents" in paragraph 3, Article XI, and for an explanation of why this word is included in this paragraph.

Mr. Bassin replied that residence is a much-used concept in United States tax law and practice, and that its presence in the treaty serves to assure to Japanese nationals all United States tax advantages and privileges to which they may be eligible by reason of their place of residence, as well as those which would accrue to them because of their nationality. He stated that an example of this is afforded by paragraph 5 (a) of Article XI, under which Japanese nationals residing in Canada or Mexico would be entitled to the same personal exemptions as Canadian or Mexican citizens, respectively, there residing. Mr. Bassin added if the residence concept is not found in Japanese tax practice, there was no reason for omitting this concept from the treaty. He stated that the treaty would in no way require Japan to use the residence concept, but that it is needed to cover the United States.

(CONTINUED FROM PAGE 1)

Mr. Newmaten stated that the residence concept is also used in Japanese tax practice.

Mr. Nagai added that paragraph 3, Article XI, is intended to give most-favored-nation treatment to nationals and companies of either party with respect to the matters mentioned in paragraphs 1 and 2 of this Article. Since, by virtue of paragraph 3, most-favored-nation treatment is to be accorded to the nationals and companies of either Party, whether resident or not, the meaning of the paragraph is quite clear without the word "residents". According to most-favored-nation treatment principles, the most favorable treatment given to the nationals and companies of any third country under similar circumstances is taken as the standard. Therefore, by including in the paragraph the word "residents", which is not mentioned at the head of the sentence, the comparison of the treatment becomes ambiguous and confusing. Mr. Nagai added that there appeared to be no serious objection to the retention of the word "residents" in paragraph 3, if the American side felt strongly that it was necessary in this paragraph. He stated that he believed the paragraph would not suffer in any way, however, if the word were to be deleted. He added that the comments on this word by the American side did not suffice to answer questions which had arisen in other Government agencies or which would arise in the Diet. Mr. Nagai suggested, therefore, that the word "residents" in paragraph 3 be deleted.

Mr. Adams replied that further clarification on the use of the word "residents" in paragraph 3 would be requested of the Department of State, and, further, that Mr. Nagai's suggestion that the word be deleted would be referred to the Department of State for its comments.

(CONTINUE TO PAGE 3)

~~Mr. Yukawa stated that the residence concept is also used in Japanese tax practice. Mr. Maga added that Japan prefers that the term "non-resident" in paragraph 5 (c) be changed to "non-resident nationals", since paragraph 5 is regarded as establishing the exceptions to most-favored-nation treatment, which should, in turn, be confined as practicable.~~

Mr. Bassin replied that the substitution of "non-resident nationals" for "non-residents" in paragraph 5 (c) would materially alter this reservation, one object of which is to permit a limited category of non-resident aliens to be given the same personal exemption privileges as are given non-resident nationals. He added that this category comprises aliens resident in a contiguous country, and that, in this connection, the test is the place of residence of the alien, not his nationality.

Mr. Yukawa then asked that consideration be given the revision of paragraph 5 (c) to read "to non-resident nationals and residents of contiguous countries". Mr. Otabe stated that the phrase "non-resident nationals" is used in other United States' treaties, notably with Ireland and Colombia, and that the standard draft phraseology is too wide in scope.

Mr. Otabe added that Japan would actually prefer to limit the reservation under paragraph 5 (c) to non-resident nationals, but that it was understood that such a limitation would not be acceptable to the United States. Mr. Otabe stated that it was for this reason that the Japanese side proposed the use of a phrase along the lines suggested by Mr. Yukawa, which follows the pattern employed in the United States Treaty with Ireland.

Mr. Bassin stated that the use of the phrase suggested by Mr. Yukawa in substitution of "non-resident nationals" would, if the remainder of paragraph 5 (c) were left untouched, establish a reservation entirely unlike that found in paragraph 3 (c), Article IX, of the United States' Treaty with Ireland. After pointing out the differences in phraseology between the standard draft and Irish formula, on the one hand, and the clause now proposed by the Japanese, on the other, Mr. Bassin stated that consideration would be given the substitution of the Irish treaty clause in toto for that in the standard draft, if the Japanese side so desired.

After further study of this point, and again stressing that Japan desired to limit the reservation under paragraph 5 (c) to non-resident nationals, Mr. Yukawa proposed that the following clause (as contained in the United States' FCN Treaty with Colombia, paragraph 3 (c), Article XI) be substituted for the standard draft's paragraph 5 (c):

> "(c) accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature with respect to income taxes and inheritance taxes than are accorded to other non-resident persons."

Mr. Adams replied that the Japanese proposal would be transmitted to the Department of State for its consideration. He then asked if there were any

pointed other than this question on paragraph 5 (c) which were unresolved. Mr. Yukawa stated that there were no other pending questions on Article XI and proposed that discussions continue with the next article.

ARTICLE XII

Mr. Yukawa stated that, in the interpretation of paragraph 1, Article XII, it was his understanding that Japan need not allocate foreign currency held by the Government to an alien who, while residing in Japan, might desire to invest in his own or some third country. He added that he wished this point to be clarified since national and most-favored-nation treatment with respect to the transfer of funds ("between the territories of the two Parties as well as between the territories of such other Party and of any third country") might be subject to various interpretations.

In response to a question by Mr. Singer, Mr. Yukawa stated that it was understood that aliens would be granted national and most-favored-nation treatment with respect to payments and remittances, within appropriate Japanese control regulations, as well as with respect to financial instruments, between Japan and their own or any third country. For example, he added, an American businessman would not be discriminated against in trade between Japan and Argentina, and he could make all transfers of payments in this connection on an equal footing with Japanese businessmen.

Amplifying his original question, Mr. Yukawa stated that foreign exchange held by the Government might be made available to a Japanese national who wished to invest dollars abroad (for example, in the development of natural resources in Southeast Asia). Such foreign exchange would be made available to a Japanese national when, for example, the foreign investment in question would contribute to Japan's requirements for raw materials, or eventually to Japan's balance of payments position. Such foreign exchange for investment purposes could not be granted to aliens, although the latter were entitled to withdraw their earnings or dividends, subject to appropriate regulation, for whatever purposes they might desire.

Mr. Adams replied that the foreign-exchange funding mentioned by Mr. Yukawa implied a special fund set aside by the Government for investment which would contribute to Japan's economy. It was to be assumed, he added, that Japan's exchange control authorities would review investment opportunities falling under this category on a case-by-case basis, and would authorize investment only when specific conditions and standards were met by the applicant. This procedure was therefore unlike the normal foreign-exchange allocation system, which should be non-discriminatory in application, and left Japanese control authorities free to approve or disapprove investment opportunities in accordance with their established standards. Mr. Adams stated that the provisions of paragraph 1, Article XII, did not extend to aliens the right automatically to participate in such special foreign-exchange funding, but he pointed out that it was possible that an American concern domiciled in Japan could develop resources in a third country for the exclusive benefit of the Japanese economy. It was believed therefore that participation by an American firm in Japan's special foreign-exchange

[illegible] would be reasonable in these circumstances and would merit sympathetic consideration by Japan's exchange control authorities.

Mr. Yukawa inquired whether it was understood that neither party was more obligated under paragraph 2 of Article XII than it would be under the International Monetary Fund. Mr. Singer replied that paragraph 2 would not impose greater restrictions on Japan in this respect that were established by the International Monetary Fund.

Mr. Yukawa stated that he understood that the question of whether the level of monetary reserves were reasonably adequate was a matter to be determined by the country which enforces the exchange control, and that, until such time as free convertibility of currencies is restored, the adequacy of the level of monetary reserves was to be judged in accordance with the various currencies held by the determining country. Mr. Yukawa stated that he understood that a favorable pound sterling position would not be regarded as establishing an adequate level of monetary reserves with respect to dollars, if at the same time, Japan's dollar position were weak. Mr. Singer replied that Mr. Yukawa's understanding on these points was correct.

Mr. Yukawa then asked if his assumption was correct that Article XII generally admits the existence of differences in the manner and extent to which exchange controls may be imposed with respect to different currencies. He added that it was also understood that such measures as are, or may become, necessary under Japan's foreign exchange quarterly budget system for the utilization of inconvertible currency (e.g., higher import allocations in sterling than are possible for dollar imports, or preferential foreign exchange licensing procedures for sterling as compared with dollars) are admissible under Article XII.

Mr. Adams replied that it was understandable that Japan might wish under special circumstances to apply controls over various currencies in accordance with different standards. These standards would, in turn, depend upon Japan's balance of payments position with respect to the particular currency in question. He added that such controls should be held to the minimum consistent with the provisions of paragraph 2, but that it was realized that occasions would arise which might require a more rigid control over dollar allocations for imports than over sterling allocations. Mr. Adams expressed the opinion that such differences in control measures were admissible under the provisions of paragraph 2, and would not necessarily be regarded discriminatory if the control measures were reasonable and justifiable and were applied to the currency itself. Mr. Adams added that within this system of varying controls applicable to currencies, it was understood that there would be no discrimination or differentiation applied against United States nationals, to whom most-favored-nation treatment would be accorded.

Mr. Otabe asked whether it was understood that the country imposing the exchange control would of itself determine the amount of foreign exchange necessary for the goods and services essential to the health and welfare of its people, and, further, would decide as to what was reasonable provision for the withdrawal of compensation, earnings and investment in foreign currency.

Mr. Bassin replied that Mr. Otabe's views were correct, but pointed out that what Japan might in some cases consider "reasonable" provision for the withdrawal of earnings might not be so regarded by the United States. He pointed out that in any differences of opinion of this kind consultation in accordance with Article XII, paragraph 4, might be in order.

Mr. Otabe then asked whether it was understood that the necessity and reasonableness of exchange restrictions with respect to paragraph 4 was to be determined primarily by the country imposing the exchange controls, which would also determine whether or not these measures were detrimental or discriminatory to the interests of the nationals of the other party and the competitive position thereof.

Mr. Bassin replied that it is intended that Article XII should permit reasonable measures needed to safeguard a country's balance-of-payments position. He stated that a primary purpose of the Article is to provide that such measures be formulated and applied in a justifiable and orderly manner. He added that it was understood that Japan would determine what exchange restrictions it would impose. With respect to the question as to whether these restrictions might be detrimental or discriminatory to United States nationals, Mr. Bassin pointed out that this was a matter of direct and understandable concern to the United States in properly safeguarding the interests of its nationals.

Mr. Bassin further stated that this Article is not framed in a manner to afford reservations to the particular rules of non-discrimination which are set forth in Article XIV regarding the import-export trade, and pointed out that any reservations to the latter, which may be necessary to allow relief to a country in present or prospective balance-of-payments difficulties, is found in Article XXI, paragraph 3, of the standard draft. The latter clause in Article XXI allows each country to maintain its rights under the GATT, of which perhaps the most important is the right to impose discriminatory import-export restrictions on balance-of-payments grounds.

Mr. Otabe stated that Japanese legislation establishes a definite schedule of foreign exchange convertibility for the withdrawal of earnings from Japan for each type of investment activity and service contracts in Japan. He inquired whether it was understood that, in accordance with continued Japanese legislation along these lines, this preferential system of withdrawal of earnings for certain types of investments was permitted under Article XII.

Mr. Singer replied that he understood that Japanese regulations permit foreign exchange remittances up a certain maximum percentage of the Japanese yen earnings of a foreign company or branch in Japan (e.g. foreign shipping companies are allowed to convert into foreign currency for remittance abroad up to 90 per cent of their Japanese yen receipts for freight charges). Mr. Singer stated that he also understood that this maximum percentage varied from one particular type of business activity to another, so that a firm operating in one field of activity might be allowed to remit 90 per cent of its yen earnings, while a firm in some other field of activity would be limited to 30 per cent of its yen earnings. Having been informed by the Japanese representatives that

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his understanding was correct. Mr. Singer stated that the existence of these varying percentage standards for remittances was admissible under Article XII, provided there was no discrimination in the application of these standards, and that all firms and individuals engaged in a particular field of activity were given the opportunity for the conversion of their yen earnings for remittance purposes.

Mr. Singer further stated that it was understood that these varying percentage standards, having been established by appropriate regulation under law, would be known to a foreign national or firm upon registration to do business in Japan. Such standards, he added, might be subsequently reduced in exceptional circumstances of adverse balance of payments position as demanded, pursuant to the principles of Article XIV, but it was understood that such action would be taken in an unjustifiable manner, nor would it be applied retroactively to affect accumulated earnings which were subject to - but not yet converted under - a higher percentage standard for transfer of dividends or earnings. Mr. Nogaé replied that if it were found necessary to reduce such a percentage standard, the new standard would apply from the date of its announcement, and would not affect earnings awaiting conversion under the previous standard of remittance convertibility.

Mr. Asakai stated that it must also be understood that foreign-exchange controls would not be utilized to restrict convertibility beyond the legally established percentage standards. For example, he added, it would be considered unjustifiable and discriminatory if foreign exchange convertibility were withheld from certain fields of activity (already entitled to a certain percentage standard of remittance), while extending convertibility to firms engaged in some other fields of activity. Mr. Osabe replied that this understanding was correct.

Mr. Inoue stated that the second sentence of paragraph 3 concerning spread exchange rates seemed unnecessary, because upon participation in the International Monetary Fund (IMF), Japan would comply with the provisions of paragraph 3(a) Article VIII, of the IMF which prohibits a country from engaging in any discriminatory currency arrangements, except as authorized under the IMF Agreement or specifically approved by the IMF.

Mr. Singer pointed out that Japan might, at some future date, have different rates of exchange for remittances and foreign trade payments, although it might retain the present dollar-yen ratio as its official rate of exchange. Mr. Singer added that various countries now have two or more official or semi-official rates of foreign exchange, and that it was not improbable that such a situation might at some time prevail in Japan, thus necessitating a provision such as that in question.

Mr. Inoue replied that this matter would be referred once more to the Ministry of Finance for its consideration.

Mr. Inoue stated that paragraph 4, Article XII should be deleted because [illegible] covered by the latter part of the standard draft. He added that

~~this Article applies to all articles in the treaty and that its inclusion in~~ Article XII is misleading, giving the impression that "consultation" may have greater reference to Article XII than to any other Article in the Treaty.

Mr. Singer replied that this paragraph was included in Article XII for psychological reasons, since this Article is of direct concern to investors and businessmen who would wish to see in this Article every justifiable safeguard of their interests. Mr. Singer stated that he believed that the Department of State would be reluctant to consider the deletion of paragraph 6, in view of the many questions which would be raised by the business community in the United States.

Mr. Yukawa stated that it was his understanding that paragraph 6, Article XII, does not require consultation prior to Japan's taking any measures consistent with this Article.

Mr. Bacsin replied that such understanding was correct, pointing out that Japan and the United States do not now consult in advance concerning Japan's foreign exchange regulations. He stated that the United States might request consultation after the fact if some control action were found to be unduly discriminatory to American interests, but that consultation before the fact was not required under paragraph 6.

Mr. Yukawa replied that this point would also be referred to the Ministry of Finance for its study and consideration.

It was then agreed that the next meeting would take place on Monday, March 17, 1952.

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Office of the United States Political Adviser for Japan, Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley C. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Monday, March 17, 1952 EIGHTH INFORMAL MEETING

Mr. Adams stated that the comments on the first two Memoranda of Conversation had been received from Mr. Mori, and that the American side was now ready to discuss the changes to these Memoranda proposed by the Japanese representatives. Mr. Adams added that the Japanese side was entirely free to propose that any comments attributed to the Japanese representatives be changed, but that it was understood that the American side reserved the right to modify its own comments or replies presently on record in the light of the Japanese revisions.

Mr. Yukawa replied that this was clearly understood, and proposed that discussion begin with the Japanese comments on the Memorandum of Conversation on the first informal meeting held on February 25, 1952.

At the end of the afternoon session both sides agreed that there were no further changes to be made in the wording of the first Memorandum of Conversation. Mr. Adams stated that this would now be typed in final form, and would be ready for initialling within the following few days. Mr. Yakawa replied that the Japanese side was ready to accept the revised memorandum as final, and proposed that the next meeting be held on Thursday, March 18, 1952, to discuss the proposed changes to the Memorandum on the second meeting.

Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

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Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Thursday, March 20, 1952 NINTH INFORMAL MEETING

Discussions were resumed on the Japanese comments and proposed changes with reference to the Memorandum of Conversation on the second informal meeting held on February 27, 1952. Various changes were made in the draft memorandum, and both sides finally agreed that the revised draft prepared during this meeting was acceptable without further change. Mr. Adams stated that the final copy would be ready for initialling within a few days, and Mr. Yukawa agreed that the revised draft was accepted as a final record of the second informal meeting.

It was then agreed that general meetings would no longer be held to discuss revisions of forthcoming memoranda of conversation, since time would be saved if a special working group were responsible for reaching agreement on the final text of these memoranda. Mr. Mori and Mr. Miyagawa were designated to represent the Japanese side at these special meetings, and Mr. Adams the American side.

Mr. Yukawa then proposed that discussions be resumed on Article XII of the standard draft, which had been left pending since the seventh meeting on March 13, 1952.

With further reference to paragraph 1, Article XII, Mr. Yukawa stated that Japan welcomes dollar investments, but that some restrictions might be necessary with respect to the source of the dollar investment. He emphasized that such restrictions were obviously inapplicable to American investment, but pointed out that dollars might flow into Japan from a non-dollar country to which Japan would not be willing to permit dividend remittances in dollars.

Mr. Otabe added that there were indications that a fairly large amount of dollar funds are presently flowing into Japan from communist China, and that it was undesirable to permit an out-flow of dollars by way of dividends or investment returns from Japan back into Chinese hands. He stated further that it was understood that Article XII, paragraph 2, shall not be construed to preclude either party from exercising such restrictions as are necessary to regulate capital movements as provided for under Section 3, Article VI of the Articles of Agreement of the International Monetary Fund.

Mr. Adams reminded Mr. Otabe that any dollar funds presently in communist Chinese hands were illegally acquired, as United States regulations had frozen dollar funds held by communist Chinese late in 1950, and that no dollar transfers to communist China were possible at this time except through illegal channels.

Mr. Singer stated that the question posed by Mr. Yukawa implied that such restrictions would be applicable only to non-Americans who might wish to invest dollars in Japan from a third country. Having received an affirmative reply, Mr. Singer then pointed out that this was a matter falling entirely outside the provisions of an FCN Treaty between Japan and the United States. Any restrictions of the type contemplated would be of interest to the United States in the light of its own fiscal policies and of its own controls with respect to the communist bloc, but would not be regarded as affecting American interests under the FCN Treaty.

Mr. Adams added that in his opinion current Japanese controls would automatically absorb dollars flowing in from communist China, and that convertibility back into dollars for remittance to China or elsewhere was possible only as an investment return, since cash dollar or dollar-expressed open-account trading with China was not involved. The Foreign Investment Commission, added Mr. Adams, is already empowered to reject investment applications of certain types, and it appeared that the logical solution might be to clarify the position that no communist Chinese dollar-investment would be permitted.

Mr. Yukawa stated that the clarification given him on this point was satisfactory. He stated that there were other questions on the Japanese side with reference to Article XII and proposed that discussions on this article be continued at the next meeting on Tuesday, March 25, 1952.

Office of the United States Political Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache

Place: Ministry of Foreign Affairs, Tokyo, Japan.

Date: Tuesday, March 25, 1952. TENTH INFORMAL MEETING

ARTICLE XII

Mr. Otabe stated that further study had been given to the various comments made by the American side at the seventh and ninth meetings in clarification of Article XII. He added that the Japanese representatives were of the opinion that a reservation to paragraphs 2 and 4, Article XII, was necessary in order to cope with possible stringencies in foreign exchange. In view of the fact that Article XIV also had a bearing on the extent to which Japan might retain freedom of action in the exchange-control field, Mr. Otabe proposed that a reservation with respect to both Articles be presented by the Japanese side during the discussion on Article XIV.

Mr. Bassin reminded Mr. Otabe of a comment made by the American side at the seventh meeting that it is indeed the intent of Article XII that it should, in and of itself, permit reasonable measures to safeguard Japan's balance of payments position. Mr. Bassin added that article XII is not framed in such a manner as to afford reservations to the particular rules of non-discrimination set forth in Article XIV concerning import-export trade, and that the reservation in this connection may be found in Article XXI, paragraph 3. It was

believed, however, that some additional provision might be required in view of the special circumstances arising in the case of Japan. Mr. Bassin stated that the American side was therefore prepared to explore with the Japanese what may be appropriate in these circumstances. He suggested that the formulations contained in the United States Treaties with Israel and Uruguay might be used as a starting point for discussion purposes.

Mr. Otabe replied that the Japanese side would consider such a reservation to Articles XII and XIV for possible inclusion in the Protocol, using the treaties mentioned by Mr. Bassin as point of departure. The proposed reservation might be presented by the Japanese side during the discussions on Article XIV.

ARTICLE XIII

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In order that the term "commercial travelers" might be more clearly understood, Mr. Otabe inquired whether their entry is governed by paragraph 1 (a) or 1 (b), Article II.

Mr. Bassin replied that a "commercial traveler" was an individual whose entry was governed by Article II, paragraph 1 (a). He added that Article XIII was concerned only with the extension of most-favored-nation treatment to such travelers with respect to customs, taxes, and similar matters.

Mr. Mori asked whether the term "commercial travelers", as used in Article XIII, meant only the nationals of the other party, or whether nationals of a third country were to be included within the scope of this Article. Mr. Otabe stated that it was his understanding that this term covered only persons of United States or Japanese nationality, inasmuch as Article II, paragraph 1 (a), is limited to the nationals of either party.

Mr. Singer replied that Article XIII referred to individuals, regardless of their national status, who represented the nationals and companies of either party. He added that an American commercial traveler would be permitted entry into Japan under Article II, paragraph 1 (a), and agreed with Mr. Otabe that the latter clause did not govern the entry of non-Americans who might be representing American business interests. The entry into Japan of the latter would be subject to Japanese law, and the treaty under discussion would not apply until entry had been granted, at which time the most-favored-nation treatment principle of Article XIII would apply.

Mr. Otabe stated that the phrase "taxes and charges applicable to them, their samples and the taking of orders" was not entirely clear to the Japanese side; he therefore asked for a clarification of this phrase.

Mr. Bassin replied that the taxes and charges mentioned in this clause were three-fold: taxes assessed against the individual and his income; charges

imposed on the entry of sample goods carried by the individual; and, thirdly, charges imposed on the actual orders written or business transactions concluded by this individual. Mr. Bassin pointed out that samples are not normally subject to customs duties unless they are actually sold or left behind by the commercial traveler. Mr. Bassin added that Article XIII did not impose either on Japan or the United States any obligation to waive or rescind such taxes and charges as might be applicable under law, but rather that Article XIII extended both to Japanese and Americans the right of most-favored-nation treatment with respect to these taxes and charges.

ARTICLE XIV

Mr. Otabe referred again to the reservation which Japan would wish to make with reference to both Articles XII and XIV, and pointed to the close relation between these two Articles. He stated that either party should be allowed to impose restrictions on the exportation and importation of goods which would have the effect of restrictions on payments and transfers for international transactions, and that the former type of restrictions were considered necessary to make effective any measures to protect a country's balance-of-payments position. He added that such import-export restrictions should not be considered in violation of Article XIV inasmuch as such measures were recognized in the GATT.

Mr. Singer pointed out that Article XII permitted the imposition of foreign exchange restrictions to prevent Japan's monetary reserves from falling to a very low level.

Mr. Yukawa stated that in order to implement effectively such exchange restrictions it would sometimes be necessary to impose discriminatory restrictions on imports and exports of the type permitted under the GATT, and that some means of permitting Japan freedom of action in this connection would be necessary in view of its non-membership in the GATT.

Mr. Bassin replied that some provision might be made, such as the reservation already mentioned by the Japanese side, to meet this situation, and again suggested that the Japanese present a draft for discussion at a later meeting.

It was agreed that discussions on Article XIV would continue at the next meeting, to be held on Friday, March 28, 1952.

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